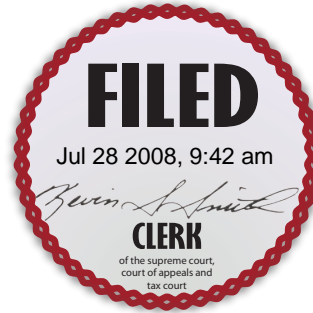


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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THOMAS WEST,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 33A01-0712-CR-610

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APPEAL FROM THE HENRY SUPERIOR COURT  
The Honorable Bob A. Witham, Judge  
Cause No. 33D02-0702-FD-36

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**July 28, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Thomas West (“West”) was convicted in Henry Superior Court of Class D felony possession of a schedule IV controlled substance, Class D felony maintaining a common nuisance, Class D felony possession of marijuana, and Class A misdemeanor possession of paraphernalia. West appeals and argues that the trial court abused its discretion when it admitted evidence seized during the search of his residence. We affirm.

### **Facts and Procedural History**

In January 2007, the Henry County Drug Task Force received information that there had been a large amount of vehicular traffic in and out of a residence located at 133 Reddingdale Drive in New Castle, Indiana. The anonymous informant stated that at various times throughout the day, individuals would enter the residence and leave just a few minutes later. Based on this information, Officers Josh Smith and Tony Darling established surveillance of the residence.

The officers learned that West’s mother owned the property, and West resided there with Kristina Butler. The officers observed numerous vehicles arrive at the residence, the occupants of the vehicles enter the residence, remain inside the residence for a few minutes, and then return to their vehicles and leave. The officers discovered that many of those vehicles were registered to individuals who had been arrested and/or convicted of offenses involving possession and dealing in narcotics.

The officers eventually obtained a warrant to search the residence on February 8, 2007. As a result of the search, West was charged with Class D felony possession of a schedule IV controlled substance, Class D felony maintaining a common nuisance, Class

D felony possession of marijuana, and Class D felony possession of paraphernalia. The State also alleged that West was a habitual substance offender.

West moved to suppress the evidence obtained during the search of his residence and argued that the officers lacked probable cause to search his home. The court denied the motion. A bench trial commenced on September 12, 2007. West was found guilty as charged, however, the Class D felony possession of paraphernalia charge was reduced to a Class A misdemeanor. West pleaded guilty to being an habitual substance offender. He was ordered to serve an aggregate sentence of seven years. West now appeals. Additional facts will be provided as necessary.

### **Discussion and Decision**

“The Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution require that warrants only be issued ‘upon probable cause, supported by oath or affirmation.’” Hirshey v. State, 852 N.E.2d 1008, 1012 (Ind. Ct. App. 2006), trans. denied. Evidence seized in violation of these provisions must be suppressed. Id. West asserts that the search warrant lacked probable cause and therefore, the trial court abused its discretion when it denied his motion to suppress the evidence obtained from the resulting search of his residence

West initially challenged the admission of the evidence through a motion to suppress. However, he is appealing from a completed trial, and therefore, the issue is “appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial.” Collins v. State, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), trans. denied. Our standard of review on the admissibility of evidence “is essentially the same

whether the challenge is made by a pre-trial motion to suppress or by trial objection.” Id. “We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling. However, we must also consider the uncontested evidence favorable to the defendant.” Id. We will affirm the trial court’s ruling if it is supported by substantial evidence of probative value. Creekmore v. State, 800 N.E.2d 230, 233 (Ind. Ct. App. 2003).

Probable cause to issue a search warrant exists where the facts and circumstances would lead a reasonably prudent person to conclude that a search of those premises will uncover evidence of a crime. State v. Foy, 862 N.E.2d 1219, 1226 (Ind. Ct. App. 2007), trans. denied. Upon review of a probable cause determination, a reviewing court’s duty is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. Id. at 1224. In determining whether a substantial basis existed, the reviewing court, giving deference to the magistrate’s determination, considers whether reasonable inferences drawn from the totality of the evidence supports the determination of probable cause. Id.

West argues that the search warrant was not supported by probable cause because the credibility of the anonymous informant was unknown.<sup>1</sup> Where a warrant is sought based upon hearsay information, the affidavit must either:

(1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or

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<sup>1</sup> Although it is not entirely clear from the record before us, it appears that the anonymous informant was simply a concerned citizen and resident of West’s neighborhood. The credibility of a concerned citizen is generally inherently more credible than that of a “professional” confidential informant. See Scott v. State, 883 N.E.2d 147, 155 (Ind. Ct. App. 2008).

(2) contain information that establishes that the totality of the circumstances corroborates the hearsay.

Ind. Code § 35-33-5-2(b)(1), (2) (2004 & Supp. 2008).

“[U]ncorroborated hearsay from a source whose credibility is itself unknown, standing alone, cannot support a finding of probable cause to issue a search warrant.” Jaggers v. State, 687 N.E.2d 180, 182 (Ind. 1997). For the purpose of proving probable cause, the trustworthiness of hearsay can be established in a number of ways, including where: “(1) the informant has given correct information in the past, (2) independent police investigation corroborates the informant’s statements, (3) some basis for the informant’s knowledge is demonstrated, or (4) the informant predicts conduct or activity by the suspect that is not ordinarily easily predicted.” Spillers v. State, 847 N.E.2d 949, 954 (Ind. 2006). “These examples are not exclusive.” Id. Depending upon the facts, there may be other considerations in establishing the reliability of the informant or hearsay. Id.

The anonymous informant told a Henry County Drug Task Force Officer that “there ha[d] been a large amount of vehicular traffic pulling up in front of [West’s] residence on a daily basis throughout varies [sic] times of the day.” Ex. Vol., State’s Ex. 1. He also stated that the “occupants of those vehicles would typically enter said residence and stay at said residence for only a few minutes.” Id. Finally, the informant told the officer that a “red Chevy Cavalier bearing Indiana license place number 33G466 was the main vehicle at said residence. Id.

Based on this information, the officers established surveillance of West’s residence. They observed several vehicles pull up to the residence, at least one occupant

of the vehicle go into the residence, and then leave the residence shortly thereafter. Id. Several of those vehicles were registered to individuals who had been arrested and/or convicted of narcotics offenses. In addition, West had several narcotics-related arrests.<sup>2</sup>

During surveillance of West's residence on January 25, 2007, officers observed the red Chevy Cavalier leave the residence. An officer followed the vehicle and eventually stopped it for a traffic violation. The driver was identified as Joshua Sidwell. The driver was arrested on an outstanding warrant and searched. During the search, the officer found two small baggies of crack cocaine and OxyContin. A loaded revolver was also found in the vehicle.

During surveillance of West's residence on February 2, 2007, the officers again observed the red Chevy Cavalier leave the residence. They followed the vehicle and eventually recognized the driver as Kristina Butler, who the officers knew had a suspended driver's license. The officer observed Butler hand something to a driver of a black Chevy Camero, which had also been seen at the West residence on several occasions. As a result of that investigation, Butler was arrested for marijuana possession.

On February 7, 2007, Officer Smith and another detective met with the anonymous informant. The informant, by use of a mug shot, identified West as a resident of 133 Reddingdale Drive. The informant also provided Officer Smith with license plate

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<sup>2</sup> West argues that the "criminal records obtained by the police as part of the surveillance was [sic] stale and should not have been considered[.]" Br. of Appellant at 11. Contrary to West's argument, "the passage of time does not change the fact that" the individuals named in the probable cause affidavit had been arrested and/or convicted of narcotics offenses. See Scott v. State, 883 N.E.2d 147, 158 (Ind. Ct. App. 2008) ("Information regarding Scott's 2002 conviction for methamphetamine manufacture is not stale.")

numbers of several vehicles that he had observed at the residence, which were the same vehicles observed during the officers' surveillance of the residence.

Based on his personal observations of vehicular traffic at West's residence, the fact that individuals remained in the residence for only a short period of time, the vehicles were registered to individuals with previous narcotics arrests and/or convictions, West's criminal history, and on two occasions, individuals who had just left the residence had drugs in their possession, Officer Smith concluded that a search of West's residence would uncover evidence of a crime, namely possession of and/or dealing in illegal substances. The officer did not rely solely upon the anonymous informant's statements in reaching that conclusion, but independently observed the activity described by the informant.

Under the totality of the circumstances described above, the information known to Officer Smith would lead a reasonably prudent person to believe that evidence of possession of and/or dealing in illegal substances would be uncovered at West's residence. Accordingly, we conclude that the search warrant was supported by probable cause, and therefore, the trial court did not abuse its discretion in admitting the evidence discovered during the execution of the search warrant.

Affirmed.

MAY, J., and VAIDIK, J., concur.

